

Petition of Western Massachusetts Electric Company for authorization and approval of the issuance and sale of long-term debt securities in an amount not to exceed \$52 million in principal before December 31, 2004; for an exemption from the competitive bidding requirements of G.L. c. 164, § 15; and for an exemption from the par value requirements of G.L. c. 164, § 15A.

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FOR: WESTERN MASSACHUSETTS ELECTRIC  
COMPANY  
Petitioner

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200 Portland Street  
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Intervenor

## I. INTRODUCTION

On July 19, 2004, the Department of Telecommunications and Energy (“Department”) issued an Order in Western Massachusetts Electric Company, D.T.E. 03-82 (2004), approving the Western Massachusetts Electric Company’s (“WMECo’s”) request to issue and sell up to \$52 million in long-term debt securities to fund a trust for the purpose of satisfying WMECo’s prior spent nuclear fuel (“PSNF”) obligation to the U.S. Department of Energy (“DOE”). On August 9, 2004, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a motion for clarification, or in the alternative, a motion for reconsideration (“Motion”). On August 16, 2004, WMECo filed an opposition (“Opposition”) to the Attorney General’s Motion.

## II. POSITION OF PARTIES

### A. Attorney General

The Attorney General seeks clarification, or, in the alternative, reconsideration of “whether the Department determined that there is an annual benefit to customers” as a result of WMECo’s creation of a PSNF Trust (“Trust”) (Motion at 1). In his Motion, the Attorney General states that G.L. c. 164, § 17A requires a specific finding that benefits to ratepayers would arise from the financing (id. at 3). The Attorney General states that the Department’s Order is silent as to a specific finding that benefits accrues to ratepayers and thus fails to make the required finding (id. at 3).

The Attorney General argues that the Department never explained the benefit of the proposal for ratepayers, and that the Department should clarify, identify and quantify the

benefits associated with the proposed financing (id.). The Attorney General also argues that the operational status of Millstone Unit 3 has an effect on the date that DOE will demand payment of the PSNF monies, and that, in turn, affects the cost of the proposal to ratepayers (id.). The Attorney General states the Department may have overlooked, through inadvertence or mistake, the Attorney General's contention that the Trust results in the loss of \$3.6 million per year for ratepayers (id. at 4; citing Tr. 16-17). The Attorney General argues that if this argument was overlooked, or erroneously made, then the Department should reconsider its decision and deny the Company's request to establish and fund a trust (id. at 4).

B. Company

The Company argues that the Motion should be dismissed because it fails to meet the Department's standards for reconsideration or clarification (Opposition at 1). The Company argues that the Department fully examined the requirements of Section 17A in its Order and determined that approval under Section 17A was not required for the requested financing (id. at 5). Thus, the Attorney General's Motion does not warrant reconsideration (id.).

Regarding the Attorney General's request for clarification, WMECo states that the Attorney General fails to identify an issue on which the Department remained silent or language which is ambiguous so as to leave doubt to its meaning (id. at 3). WMECo concludes that the Attorney General presents no argument justifying clarification of the Order (id. at 5-6).

Regarding the request for reconsideration, the Company states that the Attorney General's argument consists almost entirely of the same arguments previously made on brief

that were already considered by the Department (id. at 3). Specifically, the Company states that the Department fully considered the Attorney General's argument regarding the existence of a relationship between the Millstone Unit's operational status and the date that the DOE will demand payment of the PSNF debt (id. at 4). Also, the Company states the Department thoroughly considered the Attorney General's argument that the proposed financing would cost ratepayers \$3.6 million<sup>1</sup> per year (id. at 4, citing D.T.E. 03-82, at 15-16). Furthermore, the Company states that the Attorney General has not identified any extraordinary circumstances that would warrant reconsideration (Opposition at 4).

### III. STANDARD OF REVIEW

#### A. Clarification

Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning.

Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

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<sup>1</sup> In fact, the Department noted that this is approximately equal to an increase of \$5.48 million per year in transition charge revenues, less \$1.9 million per year in shared savings to ratepayers proposed by WMECo. D.T.E. 03-82, at 12.

B. Reconsideration

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well-settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1981).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England

Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

#### IV. ANALYSIS AND FINDINGS

##### A. Clarification

The Attorney General seeks clarification on whether the Department determined that WMECo customers would benefit by the financing pursuant to G.L. c. 164, § 17A (Motion at 1, 3). The Attorney General contends that in order to approve a trust as contemplated by Section 17A, the Department would be required to find that the proposed trust benefits ratepayers (id.). In the Order, the Department determined that Section 17A was inapplicable to the proposal because the PSNF Trust is not a corporation, association, or trust as would be required by Section 17A. D.T.E. 03-82, at 20-21. Therefore, because Section 17A is inapplicable to this proceeding, the Department concluded that it was unnecessary to make a finding on whether an annual benefit accrues to ratepayers as a result of the proposed financing.<sup>2</sup>

##### B. Reconsideration

In its Order, the Department concluded that the Attorney General's assumptions regarding the relationship between the operational status of Millstone Unit 3 and the date that

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<sup>2</sup> Instead, in D.T.E. 03-82, at 6-8, the Department reviewed the Company's filing pursuant to G.L. c. 164, §§ 14 and 16. In order to approve the issuance of long-term indebtedness, pursuant to Section 14, the Department must determine that the proposed issuance is "reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations." Pursuant to Section 16, the Department must make a determination as to whether the company meets the net plant test.

DOE will demand payment of the PSNF debt were not supported by the record evidence.

D.T.E. 03-82, at 21. Although the Department rejected the Attorney General's argument, it thoroughly considered his estimation that the proposal would costs ratepayers a net \$3.6 million per year. D.T.E. 03-8, at 15-16. In support of his Motion, the Attorney General presented no new evidence to justify his assumption that a relationship exists between Millstone Unit 3 and the date that the DOE will demand payment, or that his cost estimate is correct. Instead, the Attorney General relied on the arguments previously made in his brief and fully considered by the Department (Attorney General Brief at 4-7). D.T.E. 03-82, at 15-17. To grant a motion for reconsideration, a movant should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. Because the Attorney General presented no new evidence or information, the Attorney General does not meet the Department's standard for reconsideration and the Motion is denied.

VI. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Attorney General's Motion for Clarification or Reconsideration be, and hereby is, DENIED.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner



